MASS. CA1.2: M38/13

a Massachusetts consumer guide to

tenants' rights and responsibilities

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Consumer Affairs & Business Regulation

Finder's Fee

Only a licensed real estate broker or salesperson can charge you a fee for the purpose of finding an apartment. The amount, due date, and the purpose of the fee must be disclosed to you prior to any transaction. There is no set amount to the fee, as it is a contractual arrangement between the licensed broker or salesperson and you. (M.G.L. c. 112 §87DDD-1/2)

Pre-Payments

Before you move in, the landlord can only collect the first and last month's rent, one month's security deposit, and the purchase and installation cost for a lock and key. (M.G.L. c. 186 §15B) This may imply that a landlord cannot collect a finder's fee for his/her own apartment.

Rights Against Unlawful Discrimination

Massachusetts law prohibits discrimination in housing on the basis of race, religion, national origin, age, ancestry, military background or service, sex, sexual preference, marital status, blindness, deafness, or the need of a guide dog, except in owner-occupied two family dwellings. (M.G.L. c. 151B §4) No landlord can refuse to rent you an apartment because you receive a rental subsidy, because the apartment contains lead, or, with some exceptions, because you have children.

Before Agreeing to a Tenancy (or Signing a Lease)

- Do not put money down unless you are sure you want the apartment. Although you may be legally entitled to your money up until the landlord formally accepts you as a tenant, that money may be difficult to recover.

- Calculate the anticipated costs of utilities (i.e., heat, electricity) when determining which apartments you can afford.
- Know what is expected of you in terms of pre-payments or a finder's fee.
- Check the apartment to ensure that it is in acceptable condition. Put all agreements for repairs in writing.
- Evaluate the ease of the contract and the response record of non-resident superintendent to "after hours" emergencies.
- Talk with prospective neighbors about the competency and reputation of the landlord and/or management company.

Rental Agreements: According to state consumer protection regulations, a landlord must include the following in a written rental agreement:

- The names, addresses and telephone numbers of the owners and other persons who are responsible for the care, maintenance and repair of the property;
- The name, address and telephone number of the person authorized to receive notices of violations of law and to accept notice of lawsuit on behalf of the owner;
- The amount of the security deposit and disclosure of rights under the Security Deposit Law.

The landlord also must give you an executed copy of this agreement within 30 days of your signing it. (940 CMR 3.17 (3)) You and the landlord may agree verbally to the terms of your tenancy. It is safer, however, to get all terms in writing.

types of tenancy.

Your legal rights may vary depending on what type of tenancy you have.

A *Tenant with a Lease* is one who signs a lease to rent a particular apartment for a specified period of time. Under this tenancy, the landlord cannot increase your rent until the end of the lease, and cannot attempt to evict you before the end of your lease, unless you violate the lease agreement. You are legally obligated to pay your rent until the end of the lease. However, if you need to move out before the end of the lease, in most circumstances the landlord has a duty to help reduce your damages by looking for another tenant to replace you.

A *Tenant at Will* is one who occupies a rented apartment without a lease, but pays rent periodically (typically monthly). The agreement for the Tenancy at Will may be either written or verbal. Either the landlord or you may terminate this arrangement at any time by giving written notice 30 days or one full rental period in advance, whichever is longer. No reason is required to terminate. If your landlord wants to raise your rent, s/he must send you a proper legal notice terminating your tenancy, and then make you an offer to remain in the apartment for the increased rent.

paying the rent.

As a tenant, you have a legal responsibility to pay your landlord rent for the use of a place that is in decent condition. Massachusetts law also provides you with rights that protect the payments you make to the landlord. (M.G.L. c. 186 §15B)

Prepayments

It is an unfair or deceptive practice for a landlord to demand that you pre-pay rent in excess of that allowed by law. (See *Finding an Apartment.*)

Late Payment Penalty

A landlord cannot charge interest or a penalty on late rent until 30 days after the due date. However, the landlord can begin the eviction process immediately, even if the rent is only one day overdue. The landlord also cannot use a reverse penalty clause to encourage you to pay early. For example, it is illegal for a landlord to reduce the rent by 10% if the rent is paid within the first five days of the month.

Rent Increases

A rental increase may be **any** amount the landlord wishes to charge. Rent for a tenant with a lease can be increased only when the lease term expires. Tenants at will may face a rent increase any time, as long as notice is received at least one full rental period, but not less than 30 days, before it becomes effective.

Security Deposits and Last Month's Rent

Last month's rent is the pre-payment to the landlord for the last month of tenancy. A *security deposit* is a deposit of money to the landlord to ensure that rent will be paid and other responsibilities of the agreement will be performed. Neither may be greater than the amount of one month's rent. If the landlord later raises the rent, s/he can require you to increase the amounts of both pre-payments to equal the new rent. Neither the landlord nor you can transfer one for the use of the other without the other party's consent.

Receipts: Upon receiving the last month's rent and/or a security deposit, the landlord must give you a receipt for each pre-payment. If the landlord collects the last month's rent, s/he must give you a statement indicating that you are entitled to interest on this rent and that you should provide the landlord with a forwarding address at the termination of tenancy where interest can be sent.

Interest: <u>The landlord must pay interest on both the security deposit and the last month's rent.</u> The payment of interest on security deposits and last month's rent has been required by law since January 1, 1972, and April 1, 1984, respectively.

Security deposit: you are entitled to either 5% interest or whatever lesser amount received from the bank where the deposit has been held, <u>if</u> you live in the apartment for at least one year. The law requires the landlord to hold a security deposit in a separate, interest bearing account in a Massachusetts bank. Within 30 days of receiving your deposit, the landlord must give you a receipt identifying the bank's name and address, the account number, and the amount of the deposit.

Last month's rent: you are entitled to either 5% interest or whatever lesser amount received from the bank where the

rent was held. You do not have to live in your apartment for one year to be eligible for the interest.

Payment of Interest: Interest is payable to you each year on the anniversary date of your tenancy. The landlord must send you a statement of the interest owed, and must either include the interest, or allow you to deduct the amount from the next rental payment. If you do not receive the interest within 30 days of the anniversary, then you may deduct the interest from the next month's rent. Once you terminate your tenancy, any interest owed to you must be paid within 30 days of termination.

Statement of Condition: If a landlord or agent takes a security deposit, s/he must give you a signed, separate statement of the present condition of your apartment including a comprehensive list of any existing damage. The landlord/agent must provide you with this statement upon receipt of the deposit or within 10 days after the tenancy begins, whichever is later. If you do not agree with the contents of the statement, you must return a corrected copy to the landlord within 15 days after you receive the list or 15 days after you move in, whichever is later. If you fail to return the list and later sue to recover your security deposit, a court may view your failure to do so as your agreement that the list is complete and correct. If you submit a separate list of damages, the landlord must return it within 15 days of receipt with a clear written response of agreement or disagreement.

The signed statement and the original condition statement are the basis upon which future deductions for damage will be made. If the landlord does not give you a Statement of Condition, you should write your own and send a copy to the landlord or agent.

Damage Deduction for Security Deposits: The landlord must return your security deposit or balance within 30 days after the termination of tenancy. The landlord can only deduct for the following:

- any unpaid rent which has not been withheld validly or deducted in accordance with the law;
- any unpaid increase in real estate taxes if you were obligated to pay it under a valid tax escalator clause in your lease; and
- a reasonable amount necessary to repair any damage caused by you, any person under your control, or any person on the premises with your consent. Pet damage can also be deducted. You do not have to pay for reasonable wear and tear associated with normal use.

If the premises are damaged, the landlord must provide you with a detailed list of damages and their necessary repairs within 30 days after the tenancy ends. The landlord or agent must swear to this list under the pains and penalties of perjury. In addition, the landlord or agent must provide you with written evidence indicating the actual or estimated cost of these repairs, such as estimates, bills, invoices, or receipts.

Transfers of Pre-payments to New Landlords: Upon sale or transfer of the building, the landlord must credit the last month's rent and security deposit with any accrued interest to the new landlord. The new landlord must give written notice of the transfer within 45 days of receiving your money. If the former landlord fails to transfer the pre-payments to the new landlord, she/he is still liable, but the new landlord shall also be obligated to you for the amount of the pre-payments. The new landlord can satisfy this obligation by granting you free rent for a time equivalent to the payments made.

You are entitled to the immediate return of your security deposit if the landlord...:

- fails to make the security deposit records available for inspection during office hours; or
- fails to provide you, within 30 days of receipt of the security deposit, a receipt with the name and location of the bank and the amount and account number of the deposit;
- makes deductions for damages and fails to furnish you with an itemized list of damages within 30 days after termination of tenancy; or
- uses a lease which contain provisions conflicting with the security deposit law and attempts to enforce these provisions or attempts to get you to sign a waiver of rights.

Under the above-mentioned circumstances, the landlord cannot keep your security deposit for any reason, including making deductions for damages.

And if the landlord fails...:

- to deposit the security deposit into a bank account;
- to return the security deposit (or balance after lawful deductions) with interest within 30 days after termination of tenancy; or
- to transfer the security deposit or last month's rent to the new landlord;

... you are entitled to the immediate return of your security deposit AND triple damages, plus court costs, and reasonable attorney's fees. You also are entitled to triple damages, court costs, and reasonable attorney's fees if the landlord fails to pay interest on the last month's rent within 30 days after termination of tenancy.

Rights Against Unlawful Entry

Your landlord, or an agent for your landlord, may only enter your apartment for the following reasons:

- to inspect the premises;
- to make repairs;
- to show the apartment to a prospective tenant, purchaser, mortgagee or its agents;
- in accordance with a court order;
- if the premises appear to be abandoned, or
- to inspect the premises within the last 30 days of tenancy in order to determine the amount of damage to be deducted from the security deposit.

The landlord should be reasonable and attempt to arrange a mutually convenient time to visit the apartment. If the landlord insists on entering your apartment in an unreasonable fashion, you may file for a temporary restraining order at your local district court. (M.G.L. c. 186 §15B)

Rights Against Retaliation

Although the landlord of a *tenant at will* can terminate the tenancy or raise the rent without reason, s/he cannot do so in response to your exercising your legal rights. If the landlord tries to raise the rent, terminate or otherwise change your tenancy within six months of when you contact the Board of Health, join a tenants' organization, or exercise other legal rights, the landlord's action will be considered retaliation against you, unless the landlord can prove otherwise. The landlord will have the burden to prove that your tenancy was changed for reasons other than your having exercised your rights. (M.G.L. c. 186 §18)

Habitability Rights

You are entitled to a safe and habitable living environment. The State Sanitary Code protects the health, safety and well-being of tenants and the general public. The local Boards of Health enforce the code. (Note: In Boston, it is the Housing Inspection Department.) Copies of the Code may be purchased from the State House Bookstore, State House, Room 116, Boston, MA 02133 (617)727-2834.

The following is a sampling of provisions outlined in the Code:

Water: The landlord must provide you with enough water, with adequate pressure, to meet your ordinary needs. You cannot be charged for water. If your lease requires you to pay for water and sewer costs, that provision in your lease is void and unenforceable. The landlord also must provide the facilities to heat the water at a temperature between 110°F and 130°F, however your written lease may require you to pay for and provide the fuel to heat the water.

Heat: The landlord must provide a heating system in good working order. The landlord must pay for the heat, unless your lease requires you to pay for it. From September 16 to June 14, every room must be heated to a least 68°F between 7:00 AM and 11:00 PM, and at least 64°F at all other hours. During the heating season, the maximum heat allowable in the apartment is 78°F.

Kitchens: The landlord must provide within the kitchen: a sink of sufficient size and capacity for washing dishes and kitchen utensils, a stove and oven in good repair (unless your written lease requires you to provide your own), and space and proper facilities for the installation of a refrigerator. The landlord does not have to provide a refrigerator. If a refrigerator is provided, however, the landlord must keep it in working order.

Cockroaches and rodents: The landlord must maintain the unit free from rodents, cockroaches, and insect infestation, if there are two or more apartments in the building.

Structural Elements: Every landlord must maintain the foundation, floors, walls, doors, windows, ceilings, roof, staircases, porches, chimneys, and other structural elements of the dwelling so that it excludes wind, rain, and snow; is rodent-proof, weathertight, watertight, and free from chronic dampness; in good repair, and in every way fit for its intended use.

Snow Removal: Every exit used or intended for use by occupants of more than one dwelling unit or rooming unit shall be maintained free from obstruction.

tenants' remedies.

Rent Witholding

The Massachusetts Supreme Judicial Court ruled that when a landlord fails to maintain a dwelling in habitable condition, a tenant may properly withhold a portion of the rent from the date the landlord has notice of this breach of warranty of habitability. Rent withholding can be a useful tool to force repairs, but it is a serious step and should be dealt with carefully. You may want to get legal advice before withholding your rent since the landlord may try to evict you for non-payment of rent.

You may withhold a portion of your rent if:

- You have appealed to your landlord in writing to make the necessary repairs;
- Your local board of health has inspected your apartment and found health code violations; and

- You are current in your rent up until the time of the problem, you are not the cause of the problem, and the unsanitary conditions do not require the apartment to be vacated.

Deciding how much to withhold is based on each situation. You need only pay the fair rent for your unit given its defective condition. (M.G.L. c. 239 §8A)

Repair and Deduct

You may make emergency repairs in an apartment or common living area and deduct up to four months future rent to pay for them if three condition are met:

- The local board of health or other code enforcement agency has certified that the present conditions endanger your health or safety;
- The landlord receives written notice of the existing violations from the inspecting agency; and
- The landlord is given 5 days from the date of notice to begin repairs or to contract for outside services and 14 days to substantially complete all necessary repairs. (The inspecting agency or court may shorten this time frame.)

If you qualify under the requirements of "repair and deduct," you may treat the lease as void. You have the right to move out if you choose not to make repairs. However, you must pay the fair rental value for the period you occupied the apartment, and you must vacate within a reasonable period of time. (M.G.L. c. 111 §127L)

Shutoff Rights

The landlord cannot cause the removal of shutoff or the utilities except for a temporary period during repair or emergencies. In cases when a landlord's account is about to be shut off for non-payment, the utility company must

notify you 30 days before the scheduled termination. You also may be asked to pay part of the overdue bill to the utility, and deduct that payment from your rent. Contact the Department of Telecommunications and Energy for more information. (M.G.L. c. 164 §124I)

eviction.

A landlord cannot throw you out of your apartment without reason or notice. A landlord must go to court and obtain permission from a judge to evict you. The landlord cannot lock you out or throw you out of the apartment without a judge's order. If you are being evicted, Massachusetts law provides you with some protections. You may wish to consult with an attorney.

Terminating and Reviving your Tenancy

Tenants with a Lease: Your landlord may attempt to evict you if you have not been paying your rent, or if you or people under your control have caused excessive damage to your apartment or you have violated the terms of your lease. Your landlord must first send you a "Notice to Quit" your tenancy. If the landlord is terminating your tenancy for non-payment of rent, s/he must send you a "14 Day Notice to Quit." (M.G.L. c. 186, §11) Your lease will specify the notice requirement for other terminations; it is typically seven days.

If you are being evicted for non-payment of rent, you may avoid the eviction if you pay all rent owed, plus interest, and the landlord's cost of filing an eviction case on or before the date your Answer is due.

Tenants at Will: Your landlord must send you a "14 Day Notice to Quit" if terminating your tenancy for non-payment of rent. (M.G.L. c. 186 §12) If it is being termi-

nated for any other reason, you must be given written notice 30 days, or one full rental period in advance.

If you are being evicted for non-payment of rent, you may avoid the eviction by paying the rent due within 10 days of receiving this notice, as long as this is the first notice you have received within the last 12 months. If there is no statement of your right to revive the tenancy in the Notice, you have until the date your Answer is due.

Landlords of public housing tenancy must go through the local housing authority before they can proceed with the eviction.

Summary Process and Complaint

After the notice period has passed, the landlord must deliver to you a "Summary Process and Complaint." This officially informs you that the landlord is taking legal action against you. It will state the date of the eviction hearing and the date on which the answer must be filed.

Answer

The Answer is a written response from you stating why you should not be evicted. It also gives you the chance to make counterclaims against your landlord, which may include health code violations, retaliation, harassment, security deposit violation, or improper eviction procedure. It must be received by the court and the landlord the Monday before your court date. Keep a copy for yourself.

Judgment and Appeal

The judgment is entered with the clerk of the court on the Friday after the trial. If you lose the case, you may appeal the decision and request a new hearing. If you appeal, you must file a Notice to Appeal within 10 days after the date the judgment is entered. An appeal bond is usually required, but may be waived if you cannot afford it.

Execution

The execution is the judge's eviction order; the landlord cannot evict you without this paper. If an eviction is to be allowed, the court will give the landlord the execution 10 days after the judgment is entered. You must receive written notice of the date and time the execution will be served at least 48 hours in advance. When the execution is served (either by a constable or by registered mail), then you must leave your apartment.

The landlord may use the execution anytime within a 3 month period. However, if you were evicted for non-payment of rent, and the landlord accepts payment of the amount won in the summary process action and your current rent, then the landlord cannot use the execution at any point and must return it to the court.
(M.G.L. c. 239 §3)

The Stay of Execution

If the eviction was not your fault or you cannot find a place to live, you may be able to convince a judge to grant you a Stay of Execution, allowing you to stay in your apartment for up to six months. Elderly or disabled tenants can request a stay of up to one year.

If you are being evicted for non-payment of rent, you do not have a clear legal basis to request a stay. However, if your damages (which may arise from counterclaims filed against the landlord) are less than the amount owed to the landlord (e.g. back rent), you have 7 days to avoid eviction by paying the balance, with interest, and court costs. (M.G.L c. 239, §8A)

Eviction

When the date written on the execution order arrives, you must move out. If you do not, a sheriff or constable may remove your belongings and place them in storage, unless you give permission to have them put on the street. If your belongings are put in storage, be sure to make a detailed, descriptive list of all stored items. Your former landlord has the right to sue to recover these eviction costs. The storage company will have a lien on your belongings, which can be enforced by selling the goods. The storage company, however, cannot sell your belongings without waiting 6 months. You are not required to pay back rent to get your furniture out of storage. (M.G.L. c. 239, §4)

moving out.

Before you move out, you should consider scheduling an appointment with the landlord for an inspection of your apartment. This may help prevent future disputes with your landlord about apartment damage. Review the Statement of Condition form if you gave the landlord a security deposit. On the day you leave, be sure to clean the apartment. You also may want to take and date pictures of the condition of your apartment at the moment you move out. These photographs may help resolve security deposit disputes. If you paid the landlord a security deposit or last month's rent, leave the landlord your forwarding address so s/he can mail you any interest you are owed.

sources of help.

Housing Discrimination:
Massachusetts Commission Against Discrimination
(617) 727-3990

Complaints Against Real Estate Agents/ Salespersons:
Division of Registration
Investigative Unit
(617) 727-7406

Lead Paint Removal:
Department of Public Health
Childhood Lead Poisoning Prevention Program
(617) 522-3700
Toll Free: (800) 532-9571

Face-to-Face Mediation:
For the program in your area call:
Attorney General's Consumer Hotline
(617) 727-8400

Housing Services Program:
Provides mediation for low-income tenants and landlords
Executive Office of Communities and Development
(617) 727-7127

General Questions:
Office of Consumer Affairs
and Business Regulation
(617) 727-7780 or
Toll Free: (888) 283-3757

other resources.

Consumer Guides

Banks Selling Insurance
Home Improvement
Landlords' Rights and Responsibilities
Lemon Aid Law
Managing Credit and Debt
New & Leased Car Lemon Law
Shopping Rights
Small Claims Court
Tenants' Rights and Responsibilities
30-day Demand Letter
Used Vehicle Warranty Law

Consumer Fact Sheets

Auto Repair Rights
Credit Card Secrets
Making Health Clubs Work Out for You
Stopping Junk Mail, Calls, and E-mail
Surviving Financial Identity Theft

Consumer Hotline

(617) 727-7780
Toll Free (888) 283-3757

Online Resource Center

http://www.consumer.com/consumer

e-mail

ask@consumer.com

This publication provides general information about Massachusetts consumer issues and procedures. It is not designed to address all questions in detail and consumers are encouraged to seek further guidance by contacting the agency directly.

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